

ICTR-96-10-A & ICTR-96-17-A

24 June 2004
(6530/h-6527/h)6530/h
RMMInternational Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**IN THE APPEALS CHAMBER****Before:**Judge Theodor Meron, Presiding Judge
Judge Florence Mumba
Judge Mehmet Güney
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca**Registrar :**

Mr. Adama Dieng

Date:

24 June 2004

ICTR Appeals Chamber

Date: 24 June 2004

Action: PG

Copied To: Concerned Judges

LOs, Parties, Judicial Bd
LSS**THE PROSECUTOR**

v.

Elizaphan NTAKIRUTIMANA and Gérard NTAKIRUTIMANA*Cases No. ICTR-96-10-A and ICTR-96-17-A***DECISION ON DEFENCE MOTION TO STRIKE ANNEX B
FROM THE PROSECUTION RESPONSE BRIEF
AND FOR RE-CERTIFICATION OF THE RECORD****Counsel for the Prosecution**Ms. Melanie Werrett
Mr. James Stewart**Counsel for Gérard Ntakirutimana**Mr. David Jacobs
Mr. David Paciocco

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS	
NAME / NOM: ROSETTE M MORRISON	
SIGNATURE: [Signature]	DATE: 24/6/04

Counsel for Elizaphan Ntakirutimana

Mr. Ramsey Clark

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THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 ("Appeals Chamber" and "International Tribunal" respectively),

BEING SEISED OF the "Defence Motion to Strike Annex B from the Prosecution Response Brief, and for Re-Certification of the Record" ("Motion"), filed on 2 March 2004 by Gérard Ntakirutimana ("Appellant"), by which the Appellant requests *inter alia*:

- i) an order striking Annex B of the Prosecution's Response Brief ("Annex B") and all references to the documents therein from the Prosecution's Response Brief,
- ii) an order permitting the Appellant to file an addendum to his Appeal Brief to further arguments in respect of translation errors, and
- iii) an order for the re-translation, re-transcription and re-certification of all the testimony in the case so as to create a reliable Appeal Record;

NOTING the "Prosecution Response to Defence Motion to Strike Annex B from the Prosecution Response Brief, and for Re-Certification of the Record", filed on 11 March 2004, in which the Prosecution opposes the Motion as being without foundation;

NOTING that, to support one of his grounds of appeal, the Appellant argued, with reference to the transcript, that Witness GG had personally spelt names of people and places whilst testifying before the Trial Chamber, despite the witness' claim of illiteracy¹;

NOTING that, in response, the Prosecution submitted that the transcript fails to reflect that it was the interpreter, rather than Witness GG, who spelt out the names and that, to support this conclusion, the Prosecution presented in Annex B a "Certification of audio transcripts by Mathias Ruzindana, Reviser, Language Services Section, 3 September 2003" ("Certification") and an internal Memorandum² which had been sent by a Prosecution Appeals Counsel to members of the Trial Team in this case;

¹ Defence Appeal Brief – Dr Gérard Ntakirutimana, 28 July 2003, paragraphs 96-97 ("Appellant's Brief").

² Request for assistance with certain matters arising in the appeal proceedings in *Prosecutor v. Ntakirutimana et al*, Case No. ICTR-96-10-A and ICTR-96-17-A.

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NOTING that the Appellant argues, *inter alia*, that:

- the Certification and the internal Memorandum, and references thereto, are inadmissible as they are not part of the Trial record and that the Prosecution is merely attempting to introduce new evidence "in deceptive guise" to respond to his appeal submissions, and³
- Annex B casts doubt on the accuracy of the transcript generally and the numerous errors in translation uncovered by reviewing the audio recordings of the hearings and the transcripts require a re-translation, re-transcription and re-certification of the entire record;⁴

CONSIDERING that the Certification and the internal Memorandum do not constitute additional evidence in the meaning of Rule 115 of the Rules of Procedure and Evidence as they do not challenge a finding of fact made by the Trial Chamber but merely attempt to clarify the record in order to address the Appellant's attack against Witness GG's credibility and that, as such, they can be admitted as an annex to the Prosecution's Response Brief;

CONSIDERING that the Certification provided in Annex B raises legitimate doubts on the accuracy of the transcript as to whether it was the Witness GG or the interpreter who spelt names during the Witness' testimony before the Trial Chamber and that, in view of the Appellant's argument regarding the credibility of Witness GG, it would be in the interests of justice to clarify the matter;

FINDING, after having reviewed them carefully, that the other examples of erroneous interpretations put forward by the Appellant to support his claim of re-translation do not raise any serious doubts on the accuracy and reliability of the transcripts which would require a re-translation and a re-certification of the entire record;

FOR THE FOREGOING REASONS,

HEREBY GRANTS the Motion in part and **ORDERS** the Registry to review the transcript of the testimony given by Witness GG before the Trial Chamber for accuracy and to submit to the Appeals Chamber and the parties newly certified copies of the accurate transcripts in the official languages of the International Tribunal not later than 1 July 2004;

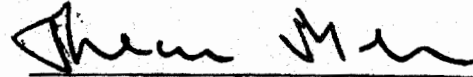
³ Motion, paragraph 11.

⁴ Motion, paragraphs 25-45.

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DISMISSES the Motion in all other respects.

Done in French and English, the English text being authoritative.



Theodor Meron
Presiding Judge

Done this 24th day of June 2004,
At The Hague,
The Netherlands.

[Seal of the International Tribunal]

